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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,607	02/11/2002	Brian P. Janowski	72350	4818
22242	7590	01/23/2004	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			BONDERER, DAVID A	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 01/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/074,607	JANOWSKI ET AL.	
Examiner	Art Unit		
D. Austin Bonderer	3732		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 29 December 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.
4a) Of the above claim(s) 16-21 and 30-37 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-6,8-11 and 22-29 is/are rejected.
7) Claim(s) 7 and 12-15 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 .

- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 rejected under 35 U.S.C. 102(b) as being anticipated by Goble et al.

Goble discloses a drill guide comprising:

- A bone pin with cams 52;
- A pin positioner 20;
- A pin holder 48;
- A pin advance assembly 56;
- Locking surfaces that keep it from retracting;
- A ratcheting mechanism;
- A push button release; and
- A biasing spring.

3. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lower et al.

Lower discloses a ratcheting pin comprising:

- A camed bone pin 24;
- A pin positioner 10;
- A pin holder 12;
- The pin positioner comprises of plurality of ridged members 14 & 16; and

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- And a plurality of fixed positions.

4. Claims 1, 9-11, 22-26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Standerwick et al.

Standerwick discloses a bone fixation apparatus comprising:

- A bone pins 10;
- A pair of pin positioner 1 & 4;
- Means to allow the user to manipulate the postioner;
- Spaced apertures 39, 76;
- Adjustable connections 5 and 41;
- Tongue and groove 40;
- A non-flat U-shaped cross-sectional area;
- Releasable pin holders 52;
- The assembly includes a fine adjustment device operable to advance the pin with fine force adjustments 47; and
- The adjustment is with a screw.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goble.

Goble lacks the use of a lever and the releasable pin holder.

Goble uses a push button. It would have been an obvious matter of design choice to have modified Goble with a lever, since applicant has not disclosed that having the lever solves any stated problem or is for any particular purpose and it appears that the button of Goble would perform equally well.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to the pin holders separable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Standerwick et al.

Standerwick lacks the use of T shaped cross-section. It would have been an obvious matter of design choice to have modified Standerwick with a T cross section, since applicant has not disclosed that having the T shaped cross-section solves any stated problem or is for any particular purpose and it appears that the U shaped Cross-section would perform equally well.

Allowable Subject Matter

8. Claims 7 and 12-15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thompson et al., Whipple, Browner et al. and Asnis et al. disclose relevant art to the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Austin Bonderer whose telephone number is 703.306.5911. The examiner can normally be reached on Monday- Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on 703.308.2582. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0873.

dab 

PEDRO PHILOGENE
PRIMARY EXAMINER